REMARKS

This application has been reviewed in light of the Office Action mailed on December 15, 2004. Claims 1-19 are pending in the application with Claims 1, 7 and 15 being in independent form. Claims 1, 7 and 15 have been amended by means of the present amendment. No new matter or issues are believed to be introduced by the amendments.

(1) In the Office Action, Claims 1-3, 5, 6, 7-15 and 17-19 were rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 5,689,825 to Averbach et al. (Averbach) in view of U.S. Patent No. 6,496,692 to Shanahan. The claims are believed to be patentable for at least the following reasons.

Applicant appreciates the courtesy granted to Applicant's attorney, Michael A. Scaturro (Reg. No. 51,356), during a telephonic interview conducted on March 14, 2005. During the telephonic interview, Applicant's Attorney pointed out to the Examiner that it is believed that the combination of references cited in the 103 rejection of Claims 1-3, 5, 6, 7-15 and 17-19 was improper.

It is instructive to first review the primary reference, i.e., Averbach. Averbach teaches a method and apparatus for downloading updated software to portable wireless communication units. Averbach teaches at Col. 2, lines 10-26, an integrated battery charger and software downloader coupled to a portable wireless communication unit via a unit interface. The software downloader receives updated software from a server and downloads the updated software to a portable wireless communication unit via the unit interface. Software updates are received from

the server in a download session wherein the integrated battery charger and software downloader stores the software updates in a memory. When the download session has concluded, upon coupling the portable wireless communication unit to the unit interface, the software update, stored in the memory of the integrated battery charger and software downloader, are sent to the portable wireless communication unit.

Regarding Claims 1 and 7, it is submitted that Averbach does not teach or disclose *means for receiving the data from a remote source and transferring the data upon receipt to at least one of the means for transferring and a storage means of the charger*, as alleged by the Examiner in the instant Office Action. The Examiner cites Averbach at Col. 2, lines 20-22 in support.

Col 2, lines 20-22 of Averbach teaches a software downloader including a processor and a memory for receiving updated software over a network. The updated software is first stored in the memory and thereafter transferred to the portable unit. In other words, Averbach teaches a linear process having multiple steps including: (1) the downloading of software from a remote source, (2) storing the downloaded software in a memory of a battery charger/software downloader unit, and thereafter, (3) transferring the software stored in the memory of the battery charger/software downloader unit to a portable wireless communication unit. It is respectfully submitted that this process does not teach or disclose the transfer of data upon receipt to at least one of the means for transferring and a storage means of the charger, as alleged in the Office Action. Rather, as previously stated, the process is linear in the sense that software updates are first stored in the memory of the battery charger/software downloader and thereafter transferred to the portable wireless communication unit. That is, storage in a first device precedes transfer to the second device.

Support is found throughout Averbach and in particular at Col. 5, lines 55-65 wherein it is stated that *at step 410 of the flowchart:* the correctly received blocks at the battery charger/software downloader are stored in the memory of the battery charger/software downloader. Thereafter *at step 418"* it is stated that after it is determined that all of the necessary blocks were received, the blocks of updated software stored in the memory 306 are sent to the portable wireless communication unit.

In contrast, the present invention teaches the selective transfer of data upon receipt from a remote source to one of a means for transferring data to the rechargeable device and a storage means of the charger.

Further as to Claims 1 and 7, in the Office Action, Shanahan is cited for curing a deficiency in Averbach. Specifically, Shanahan is cited for disclosing the act of *downloading data from a remote source and selectively storing data in the memory of the downloading device or transferring the data directly to be programmed in the device in order to facilitate any necessary processing of the downloaded data.* The Examiner cites Shanahan at Col. 4, lines 30-45.

Applicants respectfully refute the suggestion in the Office Action that the combination of Averbach and Shanahan is obvious to one of ordinary skill in the art. While it is true that Shanahan and Averbach are directed to programming information into an electronic device downloaded from a remote source, Shanahan does not teach the use of two devices and a data transfer operation there-between. Rather, Shanahan only teaches the use of a single device, i.e. a programmer 30, inside of which the downloaded data is both stored and processed.

It is respectfully submitted that the criteria for making an obviousness rejection is not met in that there is no teaching or suggestion for combining the single device of Shanahan with the two-part device of Averbach merely because Shanahan teaches the selective routing of data. As such, it is respectfully submitted that the present invention, as recited in independent claims 1 and 7 can only be arrived at using impermissible hindsight. One may not utilize the teachings of the present application as a road map to pick and choose amongst prior art references for the purpose of attempting to arrive at the presently disclosed invention. The Federal Circuit has identified three possible sources for motivation to combine references including the nature of the problem to be solved, the teachings of the prior art, and the knowledge of persons of ordinary skill in the art (see, In re Rouffet, U.S. Court of Appeals Federal Circuit, U.S.P.Q. 2d, 1453, 1458.) There must be specific principle that would motivate a skilled artisan, with no knowledge of the present invention, to combine Averbach and Shanahan. The use of hindsight in the selection of references is forbidden in comprising the case of obviousness. Lacking a motivation to combine references, a proper case of obviousness is not shown, In re Rouffet, 1458).

While the Applicants respectfully traverse the 103 rejection, independent Claim 1 has been further amended to patentably distinguish Applicant's invention over the combination of Averbach and Shanahan, alone and in combination. Claim 1 now recites limitations and/or features which are not disclosed or suggested by Averbach and Shanahan, alone and in combination. Claim 1 now recites in part:

> *means for selectably transferring the data upon receipt from the remote source to at least one of the means for transferring data to the rechargeable device and a storage means of the charger wherein said selectable transfer is (a) selectable by a user, (b) based on one or more parameters, and (c) performed automatically.*

As taught in the Specification, the charger device (base unit) of the invention may operate exclusively in the direct mode or the indirect mode, or the mode may be selectable by the user, such as via an activation switch on the charger or the user interface on the remote control device; by the server via parameters associated with the downloaded data, or automatically. By means of the present amendment, the user selectable mode of operation is more clearly defined. It is further noted that the user selectable mode of operation permits selection between the "direct" and "indirect" modes.

By contrast, Shanahan does not teach a *selectable transfer whereby the selectable transfer is (a) selectable by a user, (b) based on one or more parameters, and (c) performed automatically.* Shanahan teaches that the selectable transfer is strictly dependent upon the data format of the received data. That is, if the received data is incompatible with the downloading specification of the receiving device, then a data format conversion will be performed. Shanahan states at Col. 4, lines 30-36:

> *Processor 34 may route incoming signals from source 50 to memory 36, SPC 40, or directly to output buffer 42 depending on the circumstances. For example, some or all of the input signals received from source 50 may require further processing to meet the downloading specification of device 20. In this case, the incoming signals that require processing may be routed to SPC 40 for such processing.*

It is respectfully submitted that at least the limitations and/or features of Claim 1 which are underlined above are not disclosed or suggested by Averbach and Shanahan, alone and inc combination.

Accordingly, applicant respectfully request withdrawal of the rejection under 35 U.S.C. §102(e) with respect to Claims 1 and allowance thereof is respectfully requested.

Claims 2-3 and 5-6 contain the limitations of Claim 1 and are believed to be in condition for allowance for at least the same reasons given for Claim 1 above. Accordingly, withdrawal of the rejection under 35 U.S.C. §103(a) and allowance of Claims 2-3 and 5-6 is respectfully requested.

Independent Claims 7 and 15 as amended, recites similar subject matter as Claim 1 and therefore contain the limitations of Claim 1. Hence, for at least the same reasons given for Claim 1, Claims 7 and 15 are believed to be allowable over Averbach and Shanahan, alone and in combination.. Accordingly, withdrawal of the rejection under 35 U.S.C. §103(a) and allowance of Claims 7 and 15 is respectfully requested.

Claims 8-14 and 17-19 depend from independent Claims 7 and 15, respectively, and therefore contain the limitations of Claims 7 and 15 and are believed to be in condition for allowance for at least the same reasons given for Claims 7 and 15 above. Accordingly, withdrawal of the rejection under 35 U.S.C. §102(b) and allowance of Claims 8-14 and 17-19 is respectfully requested.

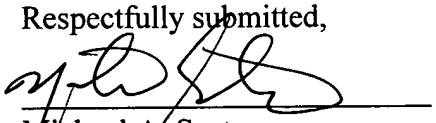
(2) In the Office Action, Claims 4 and 16 were rejected under 35 U.S.C. §103(a) as being unpatentable over Averbach in view of Shanahan and further in view of U.S. Patent No. 4,700,375 to Reed.

Claims 4 and 16 depend from Claims 1 and 15, respectively, and therefore contain the limitations of Claims 1 and 15. Hence, for at least the same reasons given for Claims 1 and 15, Claims 4 and 16 are believed to be allowable over the cited references, alone and in combination..

In view of the foregoing amendments and remarks, it is respectfully submitted that all claims presently pending in the application, namely, Claims 1-19 are believed to be in condition for allowance and patentably distinguishable over the art of record.

If the Examiner should have any questions concerning this communication or feels that an interview would be helpful, the Examiner is requested to call Dicron Halajian, Esq., Intellectual Property Counsel, Philips Electronics North America, at 914-333-9607

Respectfully submitted,



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